



---

## Appeal Decision

Site visit made on 23 March 2021

**by Felicity Thompson BA(Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 June 2021**

---

**Appeal Ref: APP/M0933/C/20/3265205**

**Land at Hillside Cottage, Gawthwaite, Ulverston LA12 8EU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr David Peters against an enforcement notice issued by South Lakeland District Council.
  - The enforcement notice was issued on 12 November 2020.
  - The breach of planning control as alleged in the notice is without planning permission:
    - 3.1.1. Unauthorised change of use of the Land from agricultural use (sui generis) to a use of storage of vehicles, caravans and materials including wood (B8), on the Land within the red line boundary of the attached Plan;
    - 3.1.2. Unauthorised operational development involving the formation of hard standing, on the Land within the red line boundary of the attached Plan;
    - 3.1.3. Unauthorised operational development involving the erection of a shed, on the Land shaded blue within the attached Plan.
  - The requirements of the notice are:
    - 5.1. Permanently remove from the Land the unauthorised shed currently situated in the area shaded blue on the attached Plan;
    - 5.2. Permanently remove from the Land all vehicles and materials including wood which is being stored within the red line boundary of the attached Plan;
    - 5.3. Permanently remove from the Land all hardstanding which has been laid within the red line boundary of the attached Plan;
    - 5.4. Permanently remove from the Land all building materials, rubble and associated materials arising out of compliance with (5.1), (5.2), (5.3) and (5.4) inclusive above;
    - 5.5. Restore the Land to its condition before the breach took place by levelling the ground and re-seeding it with grass; and
    - 5.6. Comply with (5.1), (5.2), (5.3), (5.4) and (5.5) inclusive within 13 (thirteen) weeks from the date this Notice takes effect.
  - The period for compliance with the requirements is 13 weeks.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
- 

### Decision

1. The appeal on ground (d) is allowed insofar as it relates to the formation of a hardstanding on the Land and it is directed that the enforcement notice is corrected by the deletion of allegation 3.1.2 set out in section three of the notice – the matters which appear to constitute the breach of planning control and, the consequent deletion of requirements 5.3. and 5.5. from section five of the notice.
2. It is also directed that the enforcement notice is varied by the deletion of requirement 5.6. and 13 weeks and the substitution of six months as the period for compliance.

3. Subject to these corrections and variations, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Preliminary Matters**

4. Whilst grounds (c) and (d) have not been pleaded, the appellant nevertheless makes submissions on these matters and I have therefore addressed them as though those grounds were pleaded. Such submissions were made in the appellant's appeal form and supporting statements upon which the Council had the opportunity to comment and as such there is no injustice to the Council.
5. The appellant also makes submissions in respect of a septic tank, soakaway, and associated land drainage however, the enforcement notice is not directed at these developments and as such they have not formed part of the appeal nor my assessment.
6. The enforcement notice is directed at two different types of development as defined in Section 55 of the 1990 Act. One is making a material change of use of land; the other is carrying out operational development. In considering the grounds of appeal, it is necessary to refer to both a *change of use* and *operations*. For the purposes of the different grounds of appeal, I have dealt with these in the order they are set out in the notice.

### **The appeal on ground (c)**

7. In this appeal, the onus is upon the appellant to show that, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control. The appropriate time period for the consideration of a ground (c) appeal is at the time when the notice was issued and when the appeal is determined.
8. By virtue of s.55(1) of the 1990 Act the meaning of 'development' includes the carrying out of building, engineering, mining or other operations in, on, over or under land and the making of any material change in the use of any buildings or other land. Section 57(1) provides that planning permission is required for development.
9. The appellant's case on this ground is limited, with the appellant stating that the shed is an agricultural shed used for the storage of feed and as an emergency shelter which he believed constitutes permitted development referring to Article 3(1) Schedule 2 Part 6 Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). He also stated that the hardstanding was provided to cover the land drains and septic tank for protection and improves the condition of the land as well as providing a hardstanding for baled silage. However, no further explanation or justification was provided to support their claim.
10. The Council's photographs dated 13 June 2017 and 5 March 2019 show a motorhome, van and lorry parked partly under cover of the shed. They also show piles of wood, wooden pallets and corrugated sheeting stored on the land. Consequently, the evidence indicates that the land and shed are not used for agricultural purposes.

11. The use of the land for the storage of vehicles, caravans and materials including wood is development which requires planning permission. Other than to state that there are no caravans on the land and the wood pile is for his own use, the appellant has not sought to offer views on why they consider that this did not constitute a breach of planning control. As such, I conclude that a material change of use consisting of the use of the land for storage of vehicles, caravans and materials including wood has occurred.
12. The formation of the hardstanding and the erection of the shed constitutes operational development. The appellant acknowledges that the hardstanding was provided to protect the land drains and septic tank but stated that it also provides hardstanding for baled silage. However, there is no evidence of agricultural use. Based on the evidence before me, the appellant has not shown that the works to form a hardstanding was not a breach of planning control.
13. In respect of the building, the appellant referred to Article 3(1) Schedule 2 Part 6 Class B of the GPDO however, there are no rights to erect new buildings under Class B. There are such rights by virtue of Part 6 Class A subject to specified conditions and limitations and the development relating to an agricultural unit comprising more than five hectares, where it is reasonably required for agricultural purposes.
14. However, such rights are subject to a condition which requires (amongst other things) the developer to apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building. Since the appellant did not make any such application it would not be in accordance with the terms or conditions of the permission granted by the GPDO and is therefore unauthorised.
15. Consequently, even if the building were used for agricultural purposes, it would not be permitted by the GPDO. It is development for which express planning permission is required, and that could only be granted on application made to the local planning authority in the first instance.
16. I conclude that the appellant has failed to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The developments are not development that is permitted by any development order and there is no record of planning permission having been granted for them. The appeal on ground (c) therefore fails.

### **The appeal on ground (d)**

17. An appeal on ground (d) is on the basis that, at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice.
18. To succeed on this ground, the appellant must prove on the balance of probabilities that the use of the land changed on or before 12 November 2010 and, that this use then continued for at least 10 years after the change without significant interruption. And, in respect of the hardstanding and shed, that they were substantially complete on or before 12 November 2016 (the material date).
19. The appellant has not sought to argue that the change of use began more than ten years ago. Beyond generalised assertions that the works were completed

more than four years ago, the appellant's evidence on this ground is limited to two photographs. The photographs purportedly show the hardstanding and, the shed being erected and are dated 29 October 2016 and 13 November 2016.

20. In respect of the hardstanding, the photographs show it being formed and whilst they do not show all of the hardstanding, they show large parts of it. In the first image work on the hardstanding appears to be well advanced, indeed a lorry is parked on the land and, in the second image, dated 13 November 2016, the hardstanding appears complete with what appears to be a motorhome parked on the land. Consequently, I find, on the balance of probabilities, that the hardstanding was substantially completed more than four years before the issue of the notice.
21. In respect of the shed, the image shows only machinery lifting some sort of stanchions, there is no shed. It is stated in the email accompanying the images that the second photograph shows the shed arriving on site and construction began the next day. Since the image is dated 13 November 2016, this confirms that construction did not begin until after the material date.
22. Furthermore, a third-party stated that they observed a large crane being used to lift the side and roof panels of the shed into place over the Easter weekend in 2017 and the Council stated that they received a complaint that the building had been erected on 5 May 2017.
23. Notwithstanding the appellant's evidence regarding him being away over the Easter weekend in 2017, there is no evidence of the shed being substantially complete on the material date.
24. In an appeal on ground (d) the burden of proof lies with the appellant. In the absence of contrary evidence, I have no reason to doubt that the shed was not substantially complete on 12 November 2016. Consequently, the appellant's ground (d) claim cannot succeed in this respect.
25. However, on the balance of probabilities the hardstanding was substantially complete on 12 November 2016. To this limited extent, the appeal on ground (d) succeeds.

### **The appeal on ground (a) and the deemed planning application**

26. The main issue is the effect of the use and shed on the character and appearance of the area.
27. The appeal site is located to the rear of a small cluster of dwellings which are constructed from stone and render under slate roofs and have a traditional appearance. Notwithstanding their proximity to the A5092 the dwellings are located in a distinctly rural landscape designated as open countryside for development plan purposes.
28. Policy CS1.2 of the Core Strategy<sup>1</sup> sets out the exceptional circumstances in which new development will be permitted in the open countryside, including amongst other criteria, where it has an essential requirement for a rural location or is needed to sustain existing businesses, neither of which apply in this case.

---

<sup>1</sup> South Lakeland Local Development Framework Core Strategy Adopted 20 October 2010

29. Whilst wood for the appellant's personal use is unlikely to appear significantly out of place viewed in this rural setting, since there is little screening, the storage of vehicles, including caravans, would have an incongruous and harmful appearance.
30. There is a relatively substantial stone wall to the west of the site however, the shed projects above this wall by a reasonable height such that it is prominent in views from the road which runs broadly west of the site and also in views from the B5281 and A5092.
31. Because of its siting, proportions and utilitarian appearance, the shed appears as a discordant and conspicuous intrusion particularly when seen in context with the neighbouring stone buildings and surrounding properties. As such, it has a significantly harmful effect on the character and appearance of the area.
32. For these reasons, the storage use and shed are contrary to Policies, CS1.2, CS8.2, CS8.10 of the Core Strategy and Policies DM1 and DM2 of the DMP<sup>2</sup>. Together these policies seek to ensure that development proposals contribute to achieving high quality design which responds to its sites context and which maintains or enhances the quality of the landscape. It also conflicts with the aims of the National Planning Policy Framework to recognise the intrinsic character and beauty of the countryside.

*Effect on a protected species*

33. The appellant contends that there are a pair of Barn Owls nesting inside the shed and submitted a report and photographs of the birds purportedly taken inside the shed.
34. Barn owls are protected under the Wildlife and Countryside Act (1981). The Wildlife and Countryside Act makes it illegal to intentionally kill, injure or take any wild bird or to take, damage or destroy any wild bird's nest while it is in use or to take or destroy an egg. Species listed in Schedule 1 of the Act have additional protection, making it illegal to intentionally or recklessly disturb them while they're nesting or disturb their dependent young.
35. In the absence of a survey, the presence or absence of Barn Owls in the building has not been fully established. Nevertheless, based on the appellant's submissions and my observations, it seems to me that there is a reasonable likelihood of a protected species being present and that they would be adversely affected by the requirement to remove the shed.
36. In these circumstances I must have regard to the presence of a protected species and be confident that in upholding the requirements of the notice, any potential effects on the protected species can be either avoided or satisfactorily mitigated.
37. In this regard, the Council were asked for their views on the likelihood of Barn Owls being present and about the implications if they are. In response they reiterated their doubt over the legitimacy of the appellant's photographs but provided guidance, produced by The Barn Owl Trust and which appears to be from their website, in respect of potential mitigation. In summary these measures include providing a nest box inside a building, providing a nest box in

---

<sup>2</sup> Local Plan Development Management Policies (For South Lakeland District outside the Lake District and Yorkshire Dales National Parks) Adopted Version 28 March 2019

a tree, erecting a nest box on a pole, or constructing a wildlife tower. The Council concluded that whilst there are a number of options, the most suitable would be erecting a nest box inside a detached garage in the appellant's ownership.

38. In response, the appellant stated that the garage building is not tall enough and that a wildlife tower, being the best of the options, would be expensive and not a likely solution. However, whilst I note that there did not appear to be any suitable trees within the appellant's ownership, despite generalised comments regarding the height of the garage and cost of building a wildlife tower, the appellant provided no substantive contrary evidence to demonstrate that none of the measures are feasible.
39. I cannot compel either of the main parties to provide a survey nevertheless, there is no dispute regarding the expertise of The Barn Owl Trust. Therefore, having regard to the information provided, I am satisfied that mitigation measures are available. Consequently, I am confident that upholding the notice would not inevitably lead to the appellant committing a criminal offence.
40. Whilst I note that a pole mounted box or wildlife tower would likely require an application for planning permission, I see no reason based on my site observations, that a suitable site could not be identified, albeit I acknowledge this is a matter between the appellant and the Council.
41. However, given such measures may require the preparation and submission of a planning application, in order to both avoid the nesting season and to ensure sufficient time for the appellant to submit any such application, it is reasonable and proportionate to extend the compliance period to six months.

#### *Other Matters*

42. Whilst I acknowledge that the land works were completed to improve the land for livestock, there is little evidence of an agricultural use taking place within the shed or on the appeal site. Consequently, although the appellant states that the removal of the shed will result in animal welfare issues, in the absence of substantive explanation or evidence this is a matter of little weight in my assessment.
43. That the site is not in a National Park or Area of Outstanding Natural Beauty (AONB) is a neutral matter which cannot outweigh the identified harm.
44. I acknowledge that the appellant could not afford to employ anyone to represent him however, this has no bearing on my assessment of the case which concerns matters of planning law and merits.
45. Since the appellant states that he has health issues, I have had regard to this in my assessment. However, while taking this into account, the proportionate response and that supported by the Development Plan is that the appeal should be dismissed.
46. The appellant states that if he is required to comply with the enforcement notice, including removing the wood pile, that this will cause him hardship and his home will no longer be habitable. However, since there is no evidence to demonstrate that this is the only place where wood could be stored and in the absence of explanation these are matters of limited weight.

*Conclusion on ground (a)*

47. For the reasons given above, the appeal on ground (a) should not succeed and the deemed planning application is refused.

**Conclusion**

48. For the reasons given above I conclude that the appeal should succeed on ground (d) in so far as it relates to the hardstanding. Otherwise I shall uphold the notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Felicity Thompson*

INSPECTOR